



ILLINOIS COMMERCE COMMISSION

September 2, 2005

County of Cook, the Village of East Hazel Crest and the Village of Hazel Crest, :
bodies politic and corporate; :
Petitioners, :

Vs. :

Canadian National Railway, the State of Illinois, Department of Transportation, :
Respondents. :

T05-0051

Petition to the Illinois Commerce Commission to review and allocate costs for :
proposed improvements within the subway beneath the Canadian National :
Railways elevated tracks at 171st Street in the Village of East Hazel Crest, :
Hazel Crest and the City of Harvey, located in Cook County, Illinois. :

Mr. Walter S. Kos
Cook County Highway Engineer
69 West Washington, 23rd Floor
Chicago, IL 60602

Dear Mr. Kos:

Receipt is acknowledged of the original and three (3) copies of the Petition filed September 1, 2005 in the above matter.

All future correspondence/pleadings should be filed with an original and two (2) copies and addressed to: Mr. Dave Lazarides, Acting Director of Processing, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, IL 62701 or you may file the original electronically through E-docket if you have an account. To apply for an account, please log on to www.icc.state.il.us and apply for an E-docket account.

Processing and Information Section

KI

Cc: Mr. Victor A. Modeer, IDOT
Ms. Ellen Schanzle-Haskins, IDOT
Mr. Michael J. Barron, Jr., IC
Mr. James M. Kvedaras, IC
Mr. Thomas Brown, East Hazel Crest
Mr. William Browne, Hazel Crest
Mr. Eric Kellogg, City of Harvey

THE BOARD OF COMMISSIONERS
JOHN H. STROGER, JR., PRESIDENT

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COOK COUNTY
BUREAU OF ADMINISTRATION
DEPARTMENT OF HIGHWAYS
Wally S. Kos, P.E.
Superintendent
Cook County Administration Building
69 West Washington Street 23rd Floor
Chicago, Illinois 60602-3007
Telephone (312) 603-1600-01
Fax (312) 603-9945

August 22, 2005

Mr. Kevin Sharpe
Director of Processing
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62794

TOS-0051

RECEIVED
SEP - 1 2005

Illinois Commerce Commission
RAIL SAFETY SECTION

Re: 171st Street at the Canadian
National Railroad (Structure
Numbers 016-3070, 016-3071,
016-3073, and 016-9717)
East Hazel Crest, Illinois
Hazel Crest, Illinois
Harvey, Illinois

Dear Sir:

Enclosed is a petition requesting permission to recover related expenses to the proposed work on 171st Street at the Canadian National Railroad Underpasses. Also included in this work is underpass reconstruction, widening, light installation and associated drainage work. Our intent is to let this project in the fall of 2005 in order to commence construction in 2006. Upon receipt of the petition, please contact either myself or Mr. Mark M. Johnson at (312) 603-1700 at your earliest convenience for a scheduled hearing date.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Wally S. Kos".

Wally S. Kos, P.E.
Superintendent of Highways
Cook County, Illinois

Enclosures

Cc: Mr. William Motto, Cook County Assistant States Attorney

W:\Consulting-Estimating\Clerical\Johnson, M\171st Street\Kevin Sharpe - 171 St - 8-15-05.doc

RECEIVED
SEP - 1 2005

Illinois Commerce Commission
RAIL SAFETY SECTION

PETITIONERS

vs.

CANADIAN NATIONAL RAILWAY,
THE STATE OF ILLINOIS,
DEPARTMENT OF TRANSPORTATION,

RESPONDENTS.)

705-0051

1. PETITIONERS are bodies politic and corporate in the State of Illinois.
2. Respondent Canadian National Railway is a registered rail carrier operating in the State of Illinois.
3. Respondent State of Illinois, Department of Transportation (hereinafter referred to as "Illinois Department of Transportation") is charged with the responsibility for supervising the distribution and use of the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as amended.
4. There is an existing vehicular underpass crossing of the Canadian National Railway at 171st Street (D.O.T. Structure Numbers 016-3070, 016-3071, 016-3073, 016-9717) in the Village of East Hazel Crest, City of Harvey and Village of Hazel Crest.
5. The PETITIONERS seek to improve 171st Street, between Wood Street and Ashland Avenue, in the Villages of East Hazel Crest, Hazel Crest and the City of Harvey as described more fully below and depicted on the design plans and specifications attached hereto as Group Exhibit "A".

EXISTING CONDITIONS

6. That jurisdiction of 171st Street within the project limits is designated as part of the Cook County Highway System (County Highway Route Number B84).
7. In 1918, the Illinois Central Railroad Company, predecessor to the Canadian National Railway ("Railroad") sought, and was granted conditional approval by the Village of Hazel Crest and Township of Thornton, to elevate and enlarge portions of the Railroad's yards and tracks along 171st Street. The work initiated by the Railroad was to their direct benefit by facilitating construction of a desired railroad yard. See 1918 Ordinances attached hereto as Exhibits "C1" (Village) and "C2" (Township).
8. That the PETITIONER, County of Cook, is the legal successor to the Township (TOWN) of Thornton as stated in the March 20, 1918 agreement with the Illinois Central Railroad and that the PETITIONER is the legal successor to the Village of Hazel Crest as stated in the March 20, 1918 agreement with the Illinois Central Railroad by virtue of the following chain of custody of jurisdiction of the roadway as set forth in Exhibit "H".
9. In order for the Railroad to construct the railroad yard, the Railroad lowered the existing surface of 171st Street and elevated its roadbed and tracks over an existing at-grade crossing at 171st Street. The lowering of the street surface created a subway for vehicular and pedestrian traffic passing beneath the elevated tracks that extends from east of Park Avenue (formally Egyptian Trail) to west of Ashland Avenue.
10. In accordance with the explicit terms of the 1918 agreement with the Village of Hazel Crest, the Railroad was obligated and responsible, at its sole expense, to construct and/or install and maintain the subway drainage and lighting system. (See Sections 4 and 12 of the Village Agreement, "C1").
11. For a number of years, the subway created by the Railroad to benefit their Railroad yard construction has had a documented history of flooding during rainfall events. Vehicles often get trapped under the viaducts during rainfall. These occurrences result in 171st Street being rendered impassible for substantial periods, imposing considerable burdens on East Hazel Crest and Hazel Crest emergency vehicles and to area traffic as a whole. In addition, lighting beneath each of the underpasses is inadequate or inoperable and has not been maintained by the Railroad. (See Exhibits F, G-1 & 2 and I).
12. Improper drainage within the subway is the result of a dysfunctional drainage system including storm sewers, laterals and catch basins for the ¼ mile stretch of 171st Street within the subway area, as well as a flat roadway profile between the west and east limits of the subway. Approximately 53 acres of railroad property are tributary to the subway area and runoff from this area drains unrestricted onto the 171st Street pavement.
13. The Railroad has further contributed to improper drainage of the subway area by failing to maintain the stormwater outlet. The stormwater outlet for the entire subway area is a drainage ditch that runs northeasterly from 171st Street and Ashland Avenue until it hits Center Street at approximately 167th Street. This ditch then runs along the west side of Center Street until it discharges into the Calumet – Union Drainage Ditch. This ditch, originally constructed 80 plus years ago as part of the subway construction, is in severe need of maintenance. Under the terms of the 1918 agreement with the Town of Thornton (Exhibit "C2"), specifically the sixth provision, the Railroad shall "Dig, construct and forever thereafter maintain" this ditch. The Railroad has allowed dense vegetation,

erosion, debris, fallen trees, abandoned railroad trestles and sediment buildup to occur thereby resulting in loss of conveyance capacity of the ditch.

PROPOSED IMPROVEMENT

14. In an effort to address safety issues as a result of drainage problems within the subway limits created by the existing conditions (originally constructed by the Railroad) and improper maintenance by the Railroad, Cook County proposes an improvement plan for the Commission's review and consideration. The main objectives of the proposed project are to:
 - a) Correct the flooding problems on 171st Street that have been reported by the municipalities and the County Highway Bureau of Maintenance.
 - b) Lower the road profile to attain standard vertical clearances under the four (4) railroad viaduct bridges.
 - c) Replace the pavement which has reached the end of its design life.
15. The Cook County Board of Commissioners, by resolution duly passed (see Exhibit "D" attached) has determined that public interest demands the improvement of 171st Street (hereinafter referred to as "PROJECT") at the area of the subway which carries 171st Street under the tracks controlled by the Canadian National Railway. The limits of the project extend along 171st Street from Wood Street east to Ashland Avenue of which 2,150 feet (0.407 miles) are to be improved. (See Exhibit "A" attached)
16. That the County of Cook and Village of East Hazel Crest have entered into agreements (See Exhibit "E" attached) for purposes of designing and constructing the project.
17. That this PROJECT is in the best interests of the motoring public because it will vastly improve present regional traffic flow on 171st Street while providing a safer roadway. Current delays experienced by police, fire and medical emergency vehicles due to flooding and stuck semi-trailers due to inadequate vertical clearance will be eliminated. The PROJECT is expected to take twenty-four (24) months to complete.
18. That in the interest of public safety, convenience and necessity, the PETITIONER, County of Cook, has caused to be prepared plans and specifications for the reconstruction of the subway pavement and necessary appurtenances (see Exhibit "A" attached). Briefly stated, 171st Street will be removed and replaced with three twelve feet (12') wide ten inch (10") thick concrete lanes with concrete curb and gutter, drainage inlets, entirely new main drain, a detention basin with a pump house and associated force main, sidewalks will be reconstructed, retaining walls replaced, the vertical clearance will be increased from twelve feet six inches (12' 6") current at the underpasses to a minimum of fourteen feet six inches (14' 6"), installation of a modern underpass and street lighting system within the limits of the proposed improvement and associated necessary highway appurtenances. The purpose of the stormwater detention facility, which will be located immediately south of 171st Street on Railway property, is to accommodate drainage of areas tributary to the subway, including 53 acres from Railroad property, in accordance with Illinois Drainage Law. (See Group Exhibit "A".)

19. The drainage and underpass lighting costs of the proposed improvement should be allocated to the Railroad as:
 - a) 171st Street was lowered solely due to the construction of the Railroad overpasses built by the Railroad;
 - b) Virtually all of the stormwater runoff tributary to the subway is derived from Railroad property;
 - c) The Railroad is obligated to provide for adequate drainage and lighting within the subway pursuant to the 1918 Agreements. Based upon cost estimates for this project available to the Petitioner at the time of filing of this Petition, it is estimated that approximately 2.46 million dollars of the total project cost of approximately seven million dollars are attributable to drainage and underpass lighting improvements. (See Group Exhibit B”).
20. Even if the existing pavement profile were being maintained, detention requirements and the physical impossibility of installing a functional gravity drainage system to meet the existing invert elevation at the outfall necessitate the construction of a detention basin and a lift station as proposed.

PROJECT SCHEDULE AND FUNDING

21. PETITIONERS have met with the Railroad in an attempt to identify and resolve design elements and cost responsibilities. PETITIONERS have proceeded with its improvement plans for 171st Street with the expectation that either:
 - a) The parties would agree on the design elements and cost participation of the project;
or
 - b) the parties would agree on the design of the project and leave the allocation of costs issue up to the appropriate administrative or judicial forum for decision.
22. In order to address and resolve the safety issues in this proposed project which demand a swift as practical resolution, Cook County was, and is, willing to “up front” the balance of costs for the project that remained after Federal and local funding sources were expended, provided that Cook County retained its right to pursue reimbursement of applicable costs from the Railroad as noted in (b) above. See Exhibit G-6.
23. Easement agreements recently prepared by the Railroad, however, contain language which, if executed by Cook County, would not only preclude Cook County from seeking legal relief for Railroad cost participation in the project, but also exonerate the Railroad from its current maintenance and drainage obligations under the 1918 Agreements. Consequently, this project cannot move forward without this Commission’s determination of the allocation of Railroad costs associated with the proposed improvement.
24. Cook County also seeks ICC funding for a portion of the proposed project in light of the nature of the safety issues the project addresses in an amount the Commission deems just and equitable.

25. Cook County agrees to pay the balance of construction costs for this project, less drainage and underpass associated lighting costs properly allocated to the Railroad, after application of available Federal, local and ICC funding.

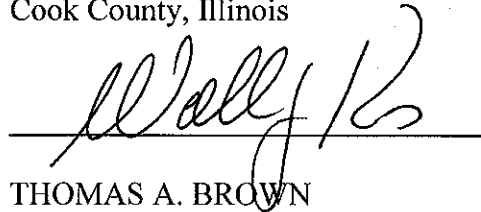
WHEREFORE, PETITIONERS respectfully requests that this Commission:

- A. Hear and decide the merits of this Petition on an expedited basis;
- B. Review the submitted proposed design plans and specifications (See Exhibit "A") and acknowledge that they have been developed based upon current Illinois Department of Transportation and Federal criteria concerning lighting and vertical clearance requirements, as well as that the improvement will address the primary safety concern of flooding.
- C. Allocate the Railroad associated costs of the drainage and lighting improvements for the project to the Railroad, payable to Cook County, as defined in Exhibit "B".
- D. Direct that the Railroad restore the northerly drainage ditch through Railroad property and along Center Street from 171st Street at Ashland Avenue to the Calumet Union Drainage Ditch to the conditions described in the 1918 Agreement.

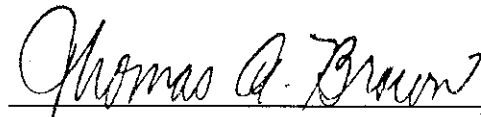
RESPECTFULLY SUBMITTED,

August 22, 2005

WALLY S. KOS, P.E.
Superintendent of Highways
Cook County, Illinois



THOMAS A. BROWN
Village President
Village of East Hazel Crest



ROBERT DONALDSON
Village President
Village of Hazel Crest



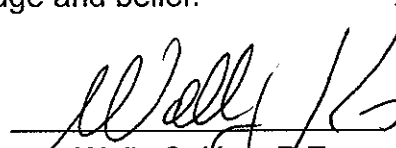
SERVICE LIST
ILLINOIS COMMERCE COMMISSION

DOCKET NO. _____

Mr. Gordon Trafton Senior Vice President, United States Region Canadian National Railway 17641 South Ashland Avenue Homewood, Illinois 60430	Mr. Wally S. Kos Superintendent of Highways Cook County Highway Department 69 West Washington Street, 23 rd Floor Chicago, Illinois 60602
Mr. James Kvedaras Senior Manager, United States Region Public and Governmental Affairs Canadian National Railway 17641 South Ashland Avenue Homewood, Illinois 60430	Mr. William Motto Assistant State's Attorney Cook County State's Attorney's Office 500 Richard J. Daley Center Chicago, Illinois 60602
Mr. John Henriksen Manager Public Works, United States Region Canadian National Railway 17641 South Ashland Avenue Homewood, Illinois 60430	Mr. Charles Ingersoll Bureau of Local Roads Illinois Department of Transportation 2300 South Dirksen Parkway Springfield, Illinois 62764
Mr. Thomas A. Brown Village President Village of East Hazel Crest 1904 West 174 th Street East Hazel Crest, Illinois 60429	Ms. Karen Phillips IC - Vice President for U.S. & Government Affairs Canadian National Railway 601 Pennsylvania Avenue Northwest Washington, DC 20004
Mr. Eric J. Kellogg Mayor City of Harvey 15320 Broadway Avenue Harvey, Illinois 60426	Mr. Robert Donaldson Village President Village of Hazel Crest 3000 West 170 th Place Hazel Crest, Illinois 60429
Congressman Jesse L. Jackson Jr. 2 nd Congressional District 17926 S. Halsted Street Homewood, IL 60430	

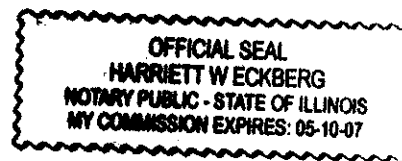
VERIFICATION

I, Wally S. Kos, P.E., first being duly sworn on oath, depose and say that I am duly appointed as Superintendent of Highways, Cook County, Illinois and that I have read the foregoing Petition, know the contents thereof, and that the same is true in substance and in fact to the best of my knowledge and belief.


Wally S. Kos, P.E.

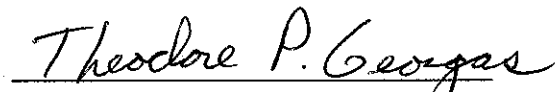
Subscribed and sworn before me this 22nd
day of August, 2005


NOTARY PUBLIC



PROOF OF SERVICE

I, Theodore P. Georgas, P.E., S.E., Chief Engineer, Design Bureau, Cook County Highway Department, certify that I have served copies of this Petition to the persons listed on the attached Service List, at the addresses indicated, by depositing the same in the U.S. Mail, postage fully prepaid, at 69 West Washington Street, Chicago, Illinois, before 5:00 p.m. on August 30th, 2005.


Theodore P. Georgas
Chief Engineer of Design

List of Exhibits

Exhibit A – Plans and Specifications

Exhibit B – Cost Estimate with Breakout of Railroad Related Costs

Exhibit C – 1918 Agreements

Exhibit D – County Board Resolution

Exhibit E – Agreement between County of Cook and East Hazel Crest

Exhibit F – Letters of Complaint concerning drainage and lighting at underpasses

Exhibit G – Correspondence between County and CNRR

Exhibit H – Chain of Jurisdictional Custody for 171st Street

Exhibit I – Affidavit

B

**171st STREET IMPROVEMENT
REQUESTED RAILROAD CONTRIBUTION**

Total Railroad contribution	\$2,809,447
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Minus METRA Participation, based on METRA Ownership of 2 tracks (out of a total of seven) on the west structure, the other three easterly structures being wholly owned by CN.	<u>- 351,180</u>
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Total reimbursement requested of CN under this petition, based on estimated unit costs, actual reimbursement would be based on actual low-bid unit price	\$2,458,267
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171st Street Reconstruction
 Cost Participation Spreadsheet
 8/24/2005

	Railroad	CCHD	Total
Construction Cost	\$2,420,408	\$4,615,302	\$7,035,709
Percentage	34%	66%	
Phase I Engineering	\$64,433	\$122,864	\$187,297
Phase II Engineering	\$164,638	\$313,935	\$478,573
Phase III Engineering	\$159,968	\$305,032	\$465,000
Totals	\$2,809,447	\$5,357,132	\$8,166,579

171st Street Improvements
 CN/IC Project Funding
 10/18/2004

ITEM	TOTAL
171st STREET/PARK AVE. ROADWAY RECONSTRUCTION	
DRAINAGE	
- STORM SEWER	424,950
- DETENTION FACILITY	1,005,527
- PUMP STATION	646,400
- FORCE MAIN	49,008
LIGHTING	
- SUBWAY LIGHTING	57,855
CN/IC UTILITIES/UTILITIES THRU CNIC PROPERTY	
- CN/IC 14" WATERMAIN RELOCATE	6,917
- MCLOED USA FIBER OPTIC RELOCATE	39,751
- 360 NETWORK FIBER OPTIC RELOCATE	100,000
- NICOR GAS MAIN RELOCATE	90,000
TOTAL	2,420,408

171st Street Improvements
Project Funding
8/24/2005

ITEM	TOTAL
171st STREET/PARK AVE. ROADWAY RECONSTRUCTION	
a. ROADWAY	1,839,195
b. DRAINAGE	
- STORM SEWER	424,950
- DETENTION FACILITY	1,005,527
- PUMP STATION	646,400
- FORCE MAIN	49,008
c. ROADSIDE IMPROVEMENTS	
- PARK AVE. RETAINING WALL	141,399
- 171st STREET RETAINING WALLS	940,732
- SIDEWALKS	118,846
- HANDRAILS	199,890
d. LIGHTING	
- STREET LIGHTING	93,550
- SUBWAY LIGHTING	192,850
e. BRIDGE REPAIRS	
- FAÇADE IMPROVEMENTS	75,500
f. TRAFFIC SIGNALS	77,967
h. LOCAL UTILITIES	
- EAST HAZEL CREST 12" WATERMAIN	323,504
- HAZEL CREST 12" WATERMAIN RELOCATE	88,937
- HOMEWOOD 24" WATERMAIN RELOCATE	44,276
- LIFT STATION	272,000
- SANITARY FORCE MAIN	34,825
i. CN/IC UTILITIES	
- CN/IC 14" WATERMAIN RELOCATE	34,586
- MCLOED USA FIBER OPTIC RELOCATE	39,751
- 360 NETWORK FIBER OPTIC RELOCATE	100,000
- NICOR GAS MAIN RELOCATE	90,000
COMMUTER LOT CONSTRUCTION	
a. COMMUTER LOT CONSTRUCTION	
- PAVEMENT	90,146
- SIDEWALK	8,929
- STORM SEWER	19,512
- LIGHTING	27,389
- LANDSCAPING	7,434
b. COMMUTER LOT ENTRANCE RECONSTRUCTION	
- PAVEMENT	36,596
- SIDEWALK	1,358
- STORM SEWER	4,412
c. PARK AVE. MODIFICATION @ 171st STREET	
- PAVEMENT	6,242
TOTAL	7,035,709